



IN THE U.S. PATENT AND TRADEMARK OFFICE

Appn. No.: 10/763,531
Applicant: John Topper
Filing Date: January 23, 2004
Title: A PORTABLE LIFTING DEVICE
TC/A.U.: 3654
Examiner: Esther O. Okezie
Docket No.: 374-001U

Mailed: March 13, 2006
at Newark, CA

RESPONSE TO ADVISORY ACTION

Mail Stop Amendment
Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Advisory Action mailed February 23, 2006, please find enclosed a Request for Continued Examination along with a Request for Extension of Time and the appropriate fees. Please enter the Amendment previously submitted in this case.

Very respectfully submitted,

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CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

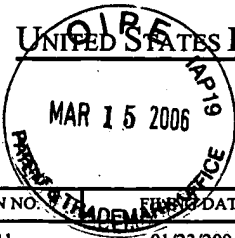
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Date: March 13, 2006



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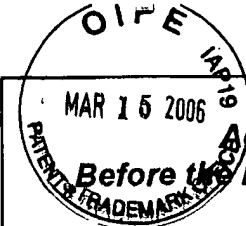
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,531	01/23/2004	John Topper	374-001U	9222
23429	7590	02/23/2006		
GREGORY SMITH & ASSOCIATES 3900 NEWPARK MALL ROAD, 3RD FLOOR NEWARK, CA 94560				
			EXAMINER	
			OKEZIE, ESTHER O	
		ART UNIT	PAPER NUMBER	
		3652		

DATE MAILED: 02/23/2006

received
2/27/06
CXS

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY



MAR 15 2006

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/763,531

Applicant(s)

TOPPER, JOHN

Examiner

Esther O. Okezie

Art Unit

3652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ They raise the issue of new matter (see NOTE below);
 - (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-19.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

EILEEN D. LILLIS

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments have been carefully considered but are not persuasive. Applicant has argued that Leonard Jr. US 4,925,226 teaches away from Shields 3,792,892 because in the last paragraph of the background of the invention of Leonard, Shields 3,792,892 is described as having numerous disadvantages including disengagement of the hooks during shifting and rolling, slackening of the cables which would also disengage the hooks, and undue strain on the hooks and hoist cable due to the design of the invention, which would render the combination of Leonard 4,925,226 and Shields 3,792,892 having no reasonable expectation for success or suggestion or motivation to combine.

Examiner does not disagree with these arguments, however, US Patent 3,792,892 was never applied in the rejection, and it is unclear to the examiner why references to this patent have been made. Applicant should refer back to both of the previous rejections which include references to Shields 3,796,404 an invention that is clearly different in function and structure than the patent applicant is referring to in substantiating these arguments.

As explained in the last rejection, Leonard discloses a lifting device with only entry hole (15) for the weighted body (26) to pass through. Leonard does not teach this entry hole including at least one slot comprising a confining end and a receiving end. Shields US 3,796,404 discloses the device of claim 1, but the device does not move an item relative to a support surface as described in the preamble of claim 1. Shields discloses a device that secures an item relative to a support surface (fig 6) using a catch including a top panel (18) and at least one slot (40) comprising a confining end (38) and a receiving end (44) open to an entry hole (34) in said top panel, and a cylindrical bob (26) including weighted body (54) insertable through said entry hole (34) and a tether (30) attached to said bob (see figures 1,2,4, and 6; abstract; col. 3, lines 23-65). In fact, Shields discloses the device of claim 1, consisting of a device for securing a container, Shields not disclose this device for lifting cargo, but for securing cargo against shifting during lifting. It would have been obvious to one of ordinary skill in the art to modify the entry hole (15) of the corner fitting of Leonard, Jr. et al. to include slots with confining ends as taught by Shields so that the weighted body or crossbar (26) could be further restricted from passing through the hole and disengaging from the corner fitting and consequently dropping the load.

Please also see US 4,457,650 to Tseng: Figures 1G and 1H; US 4,877,361 to DeRosa et al: Figures 1 and 2; US 5,733,082 to Shrader Figures 2-4, for similar structure including a catch with a top panel and at least one slot comprising a confining end and a receiving end open to an entry hole in said top panel, and a cylindrical bob including weighted body insertable through said entry hole and a tether attached to said bob.